

1 **UNITED STATES DISTRICT COURT**  
2 **DISTRICT OF NEVADA**

3 HEATH VINCENT FULKERSON,

4 Plaintiff

5 v.

6 CITY OF RENO, et. al.,

7 Defendants

Case No.: 3:20-cv-00206-MMD-WGC

**Report & Recommendation of  
United States Magistrate Judge**

Re: ECF Nos. 1, 1-1

9 This Report and Recommendation is made to the Honorable Miranda M. Du, United  
10 States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28  
11 U.S.C. § 636(b)(1)(B) and the Local Rules of Practice, LR 1B 1-4.

12 Plaintiff has filed an application to proceed in forma pauperis (IFP) (ECF No. 1) and pro  
13 se complaint (ECF No. 1-1).

14 **I. IFP APPLICATION**

15 A person may be granted permission to proceed IFP if the person “submits an affidavit  
16 that includes a statement of all assets such [person] possesses [and] that the person is unable to  
17 pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense  
18 or appeal and affiant’s belief that the person is entitled to redress.” 28 U.S.C. § 1915(a)(1); *Lopez*  
19 *v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc) (stating that 28 U.S.C. § 1915 applies to  
20 all actions filed IFP, not just prisoner actions).

21 The Local Rules of Practice for the District of Nevada provide: “Any person who is  
22 unable to prepay the fees in a civil case may apply to the court for authority to proceed [IFP].  
23

1 The application must be made on the form provided by the court and must include a financial  
2 affidavit disclosing the applicant's income, assets, expenses, and liabilities." LSR 1-1.

3 "[T]he supporting affidavits [must] state the facts as to [the] affiant's poverty with some  
4 particularity, definiteness and certainty." *U.S. v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981)  
5 (quotation marks and citation omitted). A litigant need not "be absolutely destitute to enjoy the  
6 benefits of the statute." *Adkins v. E.I. Du Pont de Nemours & Co.*, 335 U.S. 331, 339 (1948).

7 A review of the application to proceed IFP reveals Plaintiff cannot pay the filing fee;  
8 therefore, the application should be granted.

## 9 **II. SCREENING**

### 10 **A. Standard**

11 "[T]he court shall dismiss the case at any time if the court determines that-- (A) the  
12 allegation of poverty is untrue; or (B) the action or appeal-- (i) is frivolous or malicious; (ii) fails  
13 to state a claim upon which relief may be granted; or (iii) seeks monetary relief against a  
14 defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(A), (B)(i)-(iii).

15 Dismissal of a complaint for failure to state a claim upon which relief may be granted is  
16 provided for in Federal Rule of Civil Procedure 12(b)(6), and 28 U.S.C. § 1915(e)(2)(B)(ii)  
17 tracks that language. As such, when reviewing the adequacy of a complaint under this statute, the  
18 court applies the same standard as is applied under Rule 12(b)(6). *See e.g. Watison v. Carter*, 668  
19 F.3d 1108, 1112 (9th Cir. 2012) ("The standard for determining whether a plaintiff has failed to  
20 state a claim upon which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the  
21 Federal Rule of Civil Procedure 12(b)(6) standard for failure to state a claim."). Review under  
22 Rule 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of America*,  
23 232 F.3d 719, 723 (9th Cir. 2000) (citation omitted).

1 The court must accept as true the allegations, construe the pleadings in the light most  
2 favorable to the plaintiff, and resolve all doubts in the plaintiff's favor. *Jenkins v. McKeithen*,  
3 395 U.S. 411, 421 (1969) (citations omitted). Allegations in pro se complaints are "held to less  
4 stringent standards than formal pleadings drafted by lawyers[.]" *Hughes v. Rowe*, 449 U.S. 5, 9  
5 (1980) (internal quotation marks and citation omitted).

6 A complaint must contain more than a "formulaic recitation of the elements of a cause of  
7 action," it must contain factual allegations sufficient to "raise a right to relief above the  
8 speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). "The pleading  
9 must contain something more ... than ... a statement of facts that merely creates a suspicion [of]  
10 a legally cognizable right of action." *Id.* (citation and quotation marks omitted). At a minimum, a  
11 plaintiff should include "enough facts to state a claim to relief that is plausible on its face." *Id.* at  
12 570; *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

13 A dismissal should not be without leave to amend unless it is clear from the face of the  
14 complaint that the action is frivolous and could not be amended to state a federal claim, or the  
15 district court lacks subject matter jurisdiction over the action. *See Cato v. United States*, 70 F.3d  
16 1103, 1106 (9th Cir. 1995); *O'Loughlin v. Doe*, 920 F.2d 614, 616 (9th Cir. 1990).

## 17 **B. Plaintiff's Complaint**

18 Plaintiff's complaint names the City of Reno, the Reno Police Department, Washoe  
19 County and the Washoe County Sheriff's Department as defendants. Plaintiff alleges that the  
20 City of Reno and Washoe County "have let welfare fraud, healthcare fraud, and numerous other  
21 violations of state and federal constitutional and federal laws on behalf of plaintiff[.]" He goes on  
22 to state that the Reno Police Department and Washoe County sheriff have been notified of  
23 possible domestic terrorism, home invasion, vehicle burglary, and grand larceny, and no

1 investigation has taken place, and no protection has been offered. Finally, he asserts that these  
2 agencies failed to contact federal authorities when federal crimes were reported. (ECF No. 1-1.)

3 42 U.S.C. § 1983 provides a mechanism for the private enforcement of substantive rights  
4 conferred by the Constitution and federal statutes. Section 1983 "is not itself a source of  
5 substantive rights, but merely provides a method for vindicating federal rights elsewhere  
6 conferred." *Albright v. Oliver*, 510 U.S. 266, 271 (1994) (internal quotation marks and citation  
7 omitted). To state a claim under section 1983, a plaintiff must allege: (1) his or her civil rights  
8 were violated, (2) by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42,  
9 48-49 (1988). To adequately plead the section 1983 elements, a complaint must identify what  
10 constitutional right each defendant violated, and provide sufficient facts to plausibly support  
11 each violation. *See e.g., Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002) (noting defendants  
12 must personally participate in misconduct to be liable under section 1983). The "threshold  
13 inquiry in a § 1983 suit" requires courts "to 'identify the specific constitutional right' at issue."  
14 *Manuel v. City of Joliet*, 137 S.Ct. 911, 920 (2017) (citing *Albright*, 510 U.S. at 271). "After  
15 pinpointing that right, courts still must determine the elements of, and rules associated with, an  
16 action seeking damages for its violation." *Id.* (citing *Carey v. Phipps*, 435 U.S. 247, 257-58  
17 (1978)).

18 Plaintiff's complaint contains no *factual* allegations regarding any constitutional  
19 violations. He vaguely states that there has been fraud and violations, but he does not include any  
20 statements of fact for the court to discern whether a violation has occurred.

21 Local governments may be sued under section 1983 for damages, declaratory and  
22 injunctive relief. *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978). "[M]unicipalities may be  
23 liable under § 1983 for constitutional injuries pursuant to (1) an official policy; (2) a pervasive

1 practice or custom; (3) a failure to train, supervise, or discipline; or (4) a decision or act by a  
2 final policymaker.” *Horton v. City of Santa Maria*, 915 F.3d 592, 602-03 (9th Cir. 2019)  
3 (citation omitted). “A municipality may not, however, be sued under a *respondeat superior*  
4 theory.” *Id.* “A plaintiff must therefore show “*deliberate* action attributable to the municipality  
5 [that] directly caused a deprivation of federal rights.” *Id.* (citation omitted) (emphasis original).  
6 Plaintiff has not alleged facts to show a suit is proper against the City of Reno or Washoe  
7 County.

8 Nor has Plaintiff adequately pled factual allegations that give rise to any plausible claim  
9 for relief against the Reno Police Department or Washoe County Sheriff’s Office.

10 Plaintiff has filed numerous complaints in the District of Nevada and has been advised  
11 multiple times of the requirements for stating a claim under section 1983 and to refrain from  
12 filing duplicative lawsuits, but he persists in filing complaints with vague generalizations of  
13 constitutional violations, duplicative complaints, and complaints that lack subject matter  
14 jurisdiction. *See e.g.* 3:19-cv-00729-MMD-CLB; 3:19-cv-00714-MMD-WGC; 3:19-cv-00721-  
15 MMD-WGC; 3:19-cv-00753-MMD-WGC.

16 Under these circumstances, the court recommends that this action be dismissed with  
17 prejudice, as it is unlikely Plaintiff can state a claim upon which relief may be granted.

### 18 **III. RECOMMENDATION**

19 IT IS HEREBY RECOMMENDED that the District Judge enter an order:

20 (1) **GRANTING** Plaintiff’s IFP application (ECF No. 1). Plaintiff is permitted to  
21 maintain this action without prepaying the filing fee or giving security therefor. This  
22 order granting IFP status does not extend to the issuance of subpoenas at government  
23 expense.

1 (2) The complaint (ECF No. 1-1) should be **FILED**.

2 (3) The action should be **DISMISSED WITH PREJUDICE** for failing to state a claim  
3 upon which relief may be granted.

4 The Plaintiff should be aware of the following:

5 1. That [s]he may file, pursuant to 28 U.S.C. § 636(b)(1)(C), specific written objections  
6 to this Report and Recommendation within fourteen days of being served with a copy of the  
7 Report and Recommendation. These objections should be titled “Objections to Magistrate  
8 Judge’s Report and Recommendation” and should be accompanied by points and authorities for  
9 consideration by the district judge.

10 2. That this Report and Recommendation is not an appealable order and that any notice of  
11 appeal pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure should not be filed  
12 until entry of judgment by the district court.

13  
14 Dated: August 18, 2020

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16 William G. Cobb  
17 United States Magistrate Judge  
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